

NR 243: One Part of Wisconsin's Water Quality Protection Efforts

DNR's proposed revisions to NR 243, the state rule that applies primarily to Wisconsin's largest livestock operations, is only one effort now underway to protect water quality and address manure-related concerns. This fact sheet details other DNR, state and federal efforts, including a recently announced manure task force and other ongoing rule revisions.

Key points about NR 243, the rule governing Animal Feeding Operations

- NR 243 is not a new rule. DNR has been issuing permits under this rule to Concentrated Animal Feeding Operations (CAFOs) with 1,000 or more animal units (e.g., 1,000 beef cattle, 700 milking cows, 55,000 turkeys, 2,500 swine) since 1985. [See CAFO handouts or go to <http://dnr.wi.gov/org/water/wm/nps/ag/cafo.htm> for more information on CAFOs.]
- NR 243 is a water quality rule—it does not address air, odor, noise or traffic concerns.
- NR 243 and its WPDES permit program do not have requirements about where an operation can locate. They contain requirements that operations with 1,000 or more animal units must follow to protect water quality, regardless of location. Siting requirements may be implemented at the county or town level.
- Most operations under 1,000 animal units do not require a WPDES permit. There are only two such operations with a permit as of Spring 2005. While operations with fewer than 1,000 animal units that have discharges to navigable waters may be issued a WPDES permit, most water quality impacts from these operations are addressed through other regulations or voluntary programs.

Key Governmental Players, Administrative Rules And Programs

Department of Natural Resources (DNR): DNR is the state's environmental protection agency. Its authority over agricultural environmental impacts is primarily limited to water quality protection.

- **NR 151 - Performance standards and manure management prohibitions.** This rule contains agricultural performance standards (expectations) and manure management prohibitions that apply to crop and livestock producers statewide. Examples include reducing soil loss or applying nutrients in accordance with a nutrient management plan. NR 151 is implemented in concert with ATCP 50 (see explanation below). While NR 151 is a regulatory program, compliance is contingent on state or local governmental agencies providing at least 70 percent of the costs to implement the necessary agricultural practices. Much of the implementation of NR 151 is intended to occur at the local level. NR 151 also contains urban performance standards.
- **NR 243 - Animal Feeding Operations rule. (currently being revised)** – DNR is delegated by the U.S. Environmental Protection Agency to implement the WPDES permit program for large livestock operations under the federal Clean Water Act. This regulatory permit program does not require cost-sharing for compliance. CAFOs are considered “point sources” by federal law. While most livestock operations covered under NR 243 have 1,000 animal units or more, the permit program can be used to address water quality impacts from livestock operations with fewer than 1,000 animal units. Many permit program requirements are consistent with the performance standards in NR 151 and technical standards in ATCP 50. Some requirements are more restrictive, reflecting the unique issues associated with larger-scale livestock operations and the fact that the WPDES permit program is based on federal as well as state law. NR 243 also contains the Notice of Discharge (NOD) program, designed to address discharges from livestock operations with fewer than 1,000 animal units in lieu of issuance of a WPDES permit.
- **NR 120 - Priority Watershed and Lake Program rule.** This rule is mostly voluntary. It provides cost-sharing for best management practices, including manure management practices for non-CAFO operations.

Department of Agriculture Trade and Consumer Protection (DATCP): The state agency responsible for a number of programs that regulate and promote agriculture in Wisconsin. The rules listed below are limited to those that directly interact with DNR water quality rules and programs.

- **ATCP 50 - Nutrient management rule (currently being revised)** – When the DNR was given authority to develop statewide performance standards for agriculture under NR 151, DATCP was given authority to develop ATCP 50. This rule identifies nutrient management requirements, conservation (or best management) practices that crop and livestock producers may use to comply with NR 151 and the technical standards that specify how the practices must be installed. Many of the technical standards have been developed by NRCS. ATCP 50 is being revised to update the nutrient management requirements.
- **ATCP 51 - Livestock siting rule (in the process of being created)** - DATCP has been given authority to develop odor and water quality siting standards that local units of government must follow when determining whether or not to allow livestock operations to expand. ATCP 51 only addresses new and expanding livestock operations over 500 animal units (unless a lower local threshold applies) where a local unit of government requires an operation to obtain a permit before expanding. Some of the standards in ATCP 51 are similar to the requirements associated with a WPDES permit. If an applicant seeking local approval to site or expand a livestock facility already holds a WPDES permit for the same facility, the applicant may submit the WPDES permit in lieu of several worksheets. However, WPDES permit requirements- particularly related to nutrient management and waste storage--can be more stringent than the livestock siting requirements.

Natural Resource Conservation Service (NRCS): NRCS is a federal agency that is a branch of the United States Department of Agriculture (USDA). NRCS is responsible for implementing many voluntary federal agricultural cost-share programs (EQIP, CRP, CREP, CSP) designed to encourage crop and livestock producers to implement proper conservation practices. In addition, NRCS is the source of many of the technical standards in ATCP 50 (e.g. Technical Standard 590 that defines specific conditions and criteria for nutrient management). NRCS has proposed revisions to NRCS Technical Standard 590 and is receiving comments on the standard as part of proposed ATCP 50 revisions.

County Land Conservation Departments (LCD): This part of county government addresses water and soil conservation at the local level. LCDs serve as a link between producers and federal or state cost-share programs. Their work may also involve county ordinances, such as manure storage ordinances, that regulate livestock operations. Counties can also require producers to comply with the performance standards in NR 151, provided they have cost-share funds for producers.

Towns: Many towns have local ordinances that regulate livestock operations. Some towns require conditional use permits that livestock producers must meet in order to be allowed to expand. Once ATCP 51 is finalized, local conditional use permit requirements must be consistent with ATCP 51 if the town wishes to continue to regulate the siting of livestock facilities. Towns can also require producers to comply with the performance standards in NR 151, provided they have cost-share funds for producers.

State task force and other key cross-program points

Manure management task force: DNR and the Department of Agriculture, Trade and Consumer Protection on May 31 announced creation of a state task force that will identify innovative manure management practices to minimize impacts to water resources. The joint task force is comprised of representatives from farm organizations, land conservation officials, environmental groups, manure haulers, angler organizations and water resources organizations. It was created in response to more than 30 manure runoff incidents in the past year that have resulted in runoff into lakes and streams, fish kills, and contamination of drinking water wells and groundwater. The task force is expected to issue recommendations in February 2006.

Cost sharing: Many farming operations are not required to comply with the standards/practices in NR 151 and ATPC 50, including nutrient management, unless they have been offered cost-sharing to provide 70% (up to 90% in instances of financial hardship) of the cost of implementing the standard/practice. The cost-share requirement is part of the law passed by the state legislature that gave DNR and DATCP authority to create NR 151 and ATPC 50, respectively. Operations falling under ATPC 51 or the DNR's WPDES permit program are required to comply with these requirements, regardless of whether or not they have been provided cost-sharing. In some instances, they are ineligible for cost sharing.

Spectrum of Compliance: Some operations have and will comply with these rules and address water quality impacts voluntarily, with or without cost-sharing. Others will comply because (1) they fall under ATPC 51 livestock siting rules (2) they fall under a county manure storage ordinance or (3) they are WPDES permitted larger-scale livestock operations. Other operations that have already caused an acute water quality impact (e.g., a fish kill) may also be required to implement corrective measures based on spill laws or a citation issued by the DNR, or because they are covered under a WPDES permit. Since the vast majority of crop and livestock producers fall outside of regulatory programs that require correcting water quality impacts without cost-sharing (i.e., NR 243 and ATPC 51), addressing water quality impacts from agricultural operations will continue to rely on producers voluntarily implementing proper practices and state and federal sources of cost-share funding to support implementation of NR 151 and ATPC 50.

Nutrient Management: Of the 9 million acres of cropland in the state, nutrient management is practiced on nearly 700,000 acres. In addition, there are roughly 40,000 livestock operations in the state, 140 of which fall under the WPDES permit program and an additional 50-70 operations a year that will likely fall under the livestock siting rule (proposed ATPC 51). While more land and livestock operations come into compliance with state rules with and without cost-sharing, there continues to be a large percentage that will require cost-share funding to implement such practices as nutrient management and other performance standards.

Some Web Sites of Interest:

NR 243 Revisions: <http://dnr.wi.gov/org/water/wm/nps/rules/nr243/nr243.htm>

EPA CAFO Program: http://cfpub.epa.gov/npdes/home.cfm?program_id=7

NRCS technical standards: <http://efotg.nrcs.usda.gov/treemenuFS.aspx?Fips=55025&MenuName=menuWI.zip>